

BRAE CORPORATION

0-000A470

No. 11470

Date MAR 7 1979

Fee \$10.00

March 7, 1979

ICC Washington, D. C.

H. G. Homme, Jr.
Secretary
Interstate Commerce Commission
Washington, D.C. 20423

RECORDATION NO. 9875-4 Filed 1425

MAR 7 1979 - 3 55 PM

Dear Sir:

INTERSTATE COMMERCE COMMISSION

Enclosed for filing and recording pursuant to former Section 20c of the Interstate Commerce Act, 49 U.S.C. § 11303, is a First Amendment dated as of March 1, 1979 to an Equipment Trust Agreement dated as of November 1, 1978 between Morgan Guaranty Trust Company of New York, as Trustee, and Brae Corporation relating to the railroad equipment described and marked in accordance with Schedule I attached hereto. The Equipment Trust Agreement was duly filed and recorded at 11:05 a.m. on November 30, 1978 and assigned recordation No. 9875.

The names and addresses of the parties to the First Amendment are as follows:

- (a) Trustee: Morgan Guaranty Trust Company
of New York
30 West Broadway
New York, New York 10015
- (b) Company: Brae Corporation
Three Embarcadero Center
San Francisco, CA 94111

Also enclosed is a check payable to the order of the Interstate Commerce Commission in the amount of \$10 for the filing fee. Please file and record the First Amendment and cross-index it under the names of the Trustee and the Company (Brae Corporation, BraeLease Corporation and BRAE Corporation). Kindly return to the person present-

FEE OPERATION BR.
I.C.C.

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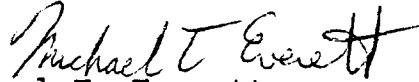
H. G. Homme, Jr.

-2-

March 7, 1979

ing this letter, together with your letter confirming such filing and recordation and your receipt for the fee, all counterparts of the enclosed document not required for filing.

Very truly yours,

A handwritten signature in cursive script, reading "Michael T. Everett". The signature is written in dark ink and is positioned above the typed name.

Michael T. Everett
Assistant Secretary

Enclosures

SCHEDULE I

<u>Lease</u>	<u># of Boxcars</u>	<u>Date of Lease</u>	<u>Term</u>	<u>Equipment Identification Numbers (Both Inclusive)</u>
Oregon, Pacific & Eastern Railway Company	100 XM	3/29/78	15 Years	OPE 15101- OPE 15200
Ashley, Drew & Northern Railway Company	300 XM 300 XP	9/26/78	15 Years	ADN 9400-9699 ADN 5600-5899
Port of Tillamook Bay	50 XM	3/17/78	15 Years	POTB 101-150
Delta Valley & Southern Railway Company	50 XM	8/4/78	15 Years	DVS 1001-1050
Galveston Wharves	250 XM	10/23/78	15 Years	GWF 1001-1250
Sierra Railroad Company	50 XM	7/26/78	15 Years	SERA 5000-5049

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INTERSTATE COMMERCE COMMISSION

First Amendment, dated as of March 1, 1979, to Equipment Trust Agreement dated as of November 1, 1978 by and between Morgan Guaranty Trust Company of New York, a corporation organized under the laws of the State of New York (hereinafter called the "Trustee") and Brae Corporation, a Delaware corporation (hereinafter called the "Company").

WHEREAS, the Company and the Trustee have entered into an Equipment Trust Agreement dated as of November 1, 1978 (hereinafter called the "Agreement");

WHEREAS, the Company and the Trustee wish to amend the Agreement to provide that the assignment to the Trustee of the Company's right, title and interest under certain leases of railroad cars may take the form of a partial assignment covering only such of the Company's right, title and interest which relate to units of Trust Equipment (as such term is defined in the Agreement);

WHEREAS, the Company and the Trustee wish to amend the Agreement to clarify that the assignment to the Trustee of the Company's right, title and interest under a maintenance contract of railroad cars is a partial assignment covering only such of the Company's right, title and interest which relate to units of Trust Equipment.

NOW, THEREFORE, in consideration of the mutual covenants and promises herein contained, the parties hereto hereby agree as follows:

Section 1.

The fourth and fifth Whereas clauses of the Agreement are hereby amended to read in their entirety as follows:

"WHEREAS, the Company has also agreed to give and assign to the Trustee, as security for the obligations of the Company hereunder, a security interest in all of the Company's right, title and interest in and to the leases described in Schedule A hereto and any and all leases hereinafter entered into with respect to

the Trust Equipment (as hereinafter defined), to the extent that such right, title and interest relate to Trust Equipment, including all rents, moneys and proceeds due or to become due with respect to the Trust Equipment under such leases;

"WHEREAS, the Company has also agreed to give and assign to the Trustee, as security for the obligations of the Company hereunder, a security interest in all of the Company's right, title and interest in and to the maintenance contract described in Schedule B hereto to the extent that such right, title and interest relate to Trust Equipment;"

Section 2.

The definitions of Funded Debt, Current Debt and Debt contained in Section 1.01 of the Agreement are hereby amended to read in their entirety as follows:

"FUNDED DEBT shall mean any obligation payable more than one year from the date of the creation thereof which under Generally Accepted Accounting Principles is shown on the balance sheet as a liability, (excluding reserves for deferred income taxes and other reserves to the extent that such reserves do not constitute an obligation), plus (without duplication) (a) all guarantees or endorsements, direct or indirect, of any Debt or obligations of others including obligations described in Section 6.05(j) (except endorsements of negotiable instruments for collection in the ordinary course of business and indemnities not substantially equivalent to a guarantee of borrowed money which are given in the ordinary course of business), and (b) Capitalized Lease Rentals. CURRENT DEBT shall mean any obligation for borrowed money (and any notes payable and drafts accepted representing extensions of credit whether or not representing obligations for borrowed money) payable on demand or within a period of one year from the date of the creation thereof; provided that any obligation shall be treated as Funded Debt, regardless of its term, if such obligation is renewable pursuant to the terms thereof or of a

revolving credit or similar agreement effective for more than one year after the date of the creation of such obligation, or may be payable out of the proceeds of a similar obligation pursuant to the terms of such original obligation or any agreement related to such original obligation and provided further, that the entire amount of any obligation for borrowed money which is incurred solely for the purpose of financing railroad equipment, which is secured by a Lien thereon and which is payable in substantially equal installments over the entire term of such obligation shall be deemed to be Funded Debt notwithstanding the fact that a portion of such obligation may be payable within a period of one year from the date of the creation thereof. Any obligation secured by a Lien on, or payable out of the proceeds of production from, property of the Company or any Restricted Subsidiary shall be deemed to be Funded or Current Debt, as the case may be, of the Company or such Restricted Subsidiary even though such obligation shall not be assumed by the Company or such Restricted Subsidiary but in the event that such obligation of the Company or any Restricted Subsidiary incurred in connection with an equity investment made by the Company or any Restricted Subsidiary as an integral part of a leveraged lease financing of transportation equipment and such Lien shall not encumber any property of the Company or any Restricted Subsidiary other than such transportation equipment, the amount of Debt attributable to the Company or such Restricted Subsidiary, as the case may be, by reason of such obligation shall be determined in accordance with Generally Accepted Accounting Principles. DEBT shall mean Funded Debt or Current Debt, as the case may be."

Section 3.

Section 3.03 of the Agreement is hereby amended by deleting the word "and" after subsection (d) thereof, by amending subsection (e) to read in its entirety as follows and by adding new subsections (f), (g), (h) and (i) to read in their entirety as follows:

"(e) An Opinion of Counsel to the effect that (i) this Agreement has been duly authorized, executed and delivered by the Company, and constitutes the legal, valid and binding obligation of the Company, (ii) the Trustee is vested with all the right, title and interest of the Company in and to all leases then in effect and covering the Equipment delivered on or prior to the date of such opinion but only to the extent such right, title and interest relate to units of Trust Equipment and (iii) Uniform Commercial Code Financing Statements relating to the assignment of the rights of the Company under the leases referred to in subclause (ii) above and a maintenance contract listed on Schedule B to this Agreement to the extent such leases and maintenance contract relate to units of Trust Equipment have been duly filed and recorded with the Secretary of State of the State of California and except as referred to in subsection (f) below no further filing, recordation or deposit is necessary (or will be necessary in the future, except as stated in such opinion) for the establishment and preservation of the rights of the Trustee in and to such unit of Equipment, or in and to any such lease or maintenance contract to the extent that such lease or maintenance contract relates to such unit of Equipment, in any state of the United States of America or the District of Columbia;

"(f) An Opinion of Counsel (who for the purposes of this subparagraph shall be Messrs. Conner, Moore & Corber) to the effect that (i) this Agreement, as amended or supplemented to describe by number each unit of Equipment delivered on or prior to the date of such opinion, and each lease referred to in subsection (e) above has been filed and recorded with the Interstate Commerce Commission in accordance with 49 United States Code 11303 and no other agreement or document has been filed or recorded (which filing or recording has not been appropriately terminated) as of the date of such opinion asserting a grant by the Company of an interest in or a Lien on the Trust Equipment

delivered on or prior to the date of such opinion or such leases and no further filing, recordation or deposit is necessary (or will be necessary in the future, except as stated in such opinion) for the establishment and preservation of the rights of the Trustee in and to such unit of Equipment, or in and to any such lease to the extent that such lease relates to such unit of Equipment, in any state of the United States of America or the District of Columbia and (ii) this Agreement constitutes in the United States of America a legal, valid and perfected first Lien on and first priority security interest in the leases referred to in subsection (e) above to the extent that any such leases relate to units of Trust Equipment as security for the Trust Certificates;

"(g) In the case of any such unit of Equipment which is leased by the Company under a lease which presently or may in the future relate both to Equipment and to railroad equipment which is not Equipment, an acknowledgement from the lessee party to the lease under which such unit of Equipment is leased by the Company acknowledging that the Company has sold (or caused to be sold) such unit of Equipment to the Trustee and consenting and acknowledging that the right, title and interest of the Company under such lease relating to such unit of Equipment have been assigned to the Trustee and confirming that any assignment of any of the right, title and interest of the Company under such lease, to the extent that they relate to railroad equipment which is not Equipment, shall not impair or offset the obligation to pay to the Trustee all rentals under such lease in respect of such unit of Equipment as provided in Section 4.09 hereof and a consent of such lessee to the effect that the right, title and interest of the Company under such lease, to the extent they relate to railroad equipment which is not Equipment, may either be retained by the Company or assigned to others;

"(h) unless such unit of Equipment shall have been described by register number in

Schedule A, as theretofore supplemented or amended, an amendment or supplement to Schedule A which describes such unit of Equipment by number; and

"(i) The original of the lease under which such unit of Equipment has been or is to be leased by the Company, together with a supplement or schedule thereto specifically describing such unit of Equipment by register number if such lease does not so describe it, unless such lease and such supplement or schedule, if any, shall previously have been delivered to the Trustee."

Section 4.

The second paragraph of Section 4.06 is hereby amended by deleting the word "and" after clause (2) thereof, by amending clause (3) thereof to read in its entirety as follows and by adding new clauses (4), (5) and (6) to read in their entirety as follows:

"(3) An Opinion of Counsel to the effect that (i) such bill or bills of sale are valid and effective, either alone or together with any other instruments referred to in and accompanying such opinion, to vest in the Trustee title to such substituted Equipment free from all claims or Liens (except as permitted by clauses (i), (ii) and (iii) of Section 6.05(c), the rights of the Company hereunder and the rights of lessees under any lease permitted by Section 4.09), (ii) a proper supplement hereto in respect of each substituted unit of Equipment has been duly authorized, executed and delivered by the parties thereto and has been recorded with the Interstate Commerce Commission pursuant to the requirements of 49 United States Code 11303, (iii) the lease relating to such unit of Equipment has been recorded with the Interstate Commerce Commission pursuant to the requirements of 49 United States Code 11303, (iv) a Uniform Commercial Code Financing Statement relating to the assignment of the rights of the Company under the lease referred to in (iii) to the extent that such lease relates to such unit of Equipment has been filed and recorded with the Secretary of State of the State of California and (v)

no further filing, recordation or deposit is necessary, or will be necessary in the future, except as stated in such opinion, for the establishment and preservation of the rights of the Trustee in and to such unit of Equipment, or in and to such lease to the extent that such lease relates to such unit of Equipment, in any state of the United States of America or the District of Columbia;

"(4) In the case of any such unit of Equipment which is leased by the Company under a lease which presently or may in the future relate both to Equipment and to railroad equipment which is not Equipment, an acknowledgement from the lessee party to the lease under which such unit of Equipment is leased by the Company acknowledging that the Company has sold (or caused to be sold) such unit of Equipment to the Trustee and consenting and acknowledging that the right, title and interest of the Company under such lease relating to such unit of Equipment have been assigned to the Trustee and confirming that any assignment of any of the right, title and interest of the Company under such lease, to the extent that they relate to railroad equipment which is not Equipment, shall not impair or offset the obligation to pay to the Trustee all rentals under such lease in respect of such unit of Equipment as provided in Section 4.09 hereof and a consent of such lessee to the effect that the right, title and interest of the Company under such lease to the extent they relate to railroad equipment which is not Equipment, may either be retained by the Company or assigned to others;

"(5) An amendment or supplement to Schedule A which describes such unit of Equipment by number; and

"(6) The original of the lease under which such unit of Equipment has been or is to be leased by the Company, together with a supplement or schedule thereto specifically describing such unit of Equipment by register number if such lease does not so describe it, unless such lease and such supplement or schedule, if any,

shall previously have been delivered to the Trustee."

Section 5.

The third paragraph of Section 4.09 of the Agreement is hereby amended to read in its entirety as follows:

"As security for the payment and performance of the obligations of the Company hereunder, the Company hereby grants, pledges and assigns unto the Trustee all of its rights, title and interest in and to the lease (including the leases referred to in Schedule A hereto) of any unit of Trust Equipment existing as of the date hereof or entered into in the future, but only to the extent such right, title and interest in and to such leases relate to units of Trust Equipment, and all rentals, moneys and proceeds payable to or receivable by the Company under any such lease in respect of any unit of Trust Equipment; provided, however, that (a) so long as no Event of Default shall have occurred and be continuing the Company shall be entitled to collect and receive all rentals, moneys and proceeds in respect of units of Trust Equipment, and (b) during the continuance of any Event of Default, all rentals, moneys and proceeds in respect of units of Trust Equipment shall be paid to the Trustee and applied to the payment or prepayment of the principal of, and/or to the payment of interest due and owing on, the Trust Certificates, all as may be specified in a Written Direction, or in the absence thereof, as may be determined by the Trustee. It is hereby agreed that the Company will under no circumstance have the right to grant, pledge or assign, other than pursuant to this Section 4.09, any of its right, title and interest in and to any lease (including the leases referred to in Schedule A hereto) relating to any unit of the Trust Equipment existing as of the date hereof or entered into in the future or permit any other railroad equipment to be leased under any such lease unless the Trustee shall have received an acknowledgement from the lessee party to the lease under which any such unit of Trust Equipment is leased by the Company acknowledging that the Company has sold (or caused to be sold) such unit of Trust Equipment to the Trustee and consenting and acknowledging that the right, title and interest of the Company under such lease relating to all units of Trust Equipment have been assigned to the Trustee and confirming that any assignment of any of the right, title and interest of the Company under such lease, to the extent that they

relate to railroad equipment which is not Equipment, shall not impair or offset the obligation to pay to the Trustee all rentals under such lease in respect of any unit of Trust Equipment and a consent of such lessee to the effect that the right, title and interest of the Company under such lease, to the extent they relate to railroad equipment which is not Equipment, may either be retained by the Company or assigned to others."

Section 6.

Schedule A to the Agreement is hereby amended to read in its entirety as provided in Annex I to this Amendment Agreement.

Section 7.

The provisions of this Amendment Agreement and all rights and obligations of the parties hereunder shall be governed by the laws of the State of New York.

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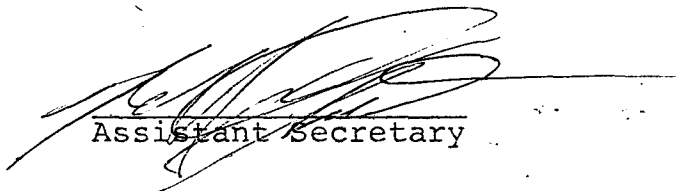
IN WITNESS WHEREOF, the Company and the Trustee have caused their names to be signed hereto by their respective officers thereunto duly authorized and their respective corporate seals, duly attested, to be hereunto affixed as of the day and year first above written.

MORGAN GUARANTY TRUST COMPANY
OF NEW YORK, as Trustee

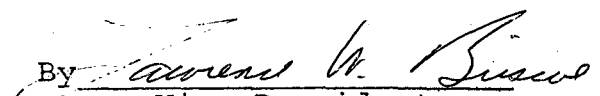
By 
Trust Officer

[CORPORATE SEAL]

Attest:


Assistant Secretary

BRAE CORPORATION

By 
Vice President


[CORPORATE SEAL]

Attest:


Assistant Secretary

STATE OF NEW YORK)
)
COUNTY OF NEW YORK) ss.:

On the 7th day of MARCH, 1979, before me personally came P. J. Crooks, to me known, who, being by me duly sworn, did depose and say that he resides at Lambertville, New Jersey 08530; that he is a Trust Officer of MORGAN GUARANTY TRUST COMPANY OF NEW YORK, one of the corporations described in and which executed the above instrument; that he knows the corporate seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by the authority of the Board of Directors of said corporation; and that he signed his name thereto by like authority.

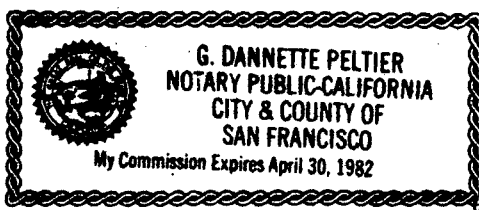
Maureen McShane
Notary Public

MAUREEN McSHANE
NOTARY PUBLIC, State of New York
No. 24-4649500
Qualified in Kings County
Certificate Filed in New York County
Commission Expires March 30, 1979

(SEAL)

STATE OF CALIFORNIA)
)
CITY AND COUNTY OF SAN FRANCISCO) ss.:

On the 5th day of March, 1979, before me personally came Lawrence W. Briscoe to me known, who, being by me duly sworn, did depose and say that he resides at San Francisco, California; that he is the Vice President-Finance of BRAE CORPORATION, one of the corporations described in and which executed the above instrument; that he knows the corporate seal of said corporation; that the seal affixed to the said instrument is such corporate seal; that it was so affixed by authority of the Board of Directors of said corporation; and that he signed his name thereto by like authority.



(SEAL)

G. Dannette Peltier
Notary Public

SCHEDULE A

<u>Lessee</u>	<u># of Boxcars to be Under Lease</u>	<u># of Boxcars which are Trust Equipment</u>	<u>Date of Leases</u>	<u>Term</u>	<u>Trust Equipment Identification Numbers (Both Inclusive)</u>
Oregon, Pacific & Eastern Railway Company	100 XM	100 XM	3/29/78	15 years	OPE 15101- OPE 15200
Ashley, Drew & Northern Railway Company	300 XM 300 XP	300 XM 300 XP	9/26/78	15 years	ADN 9400-9699 ADN 5600-5899
Port of Tillamook Bay	50 XM	50 XM	3/17/78	15 years	POTB 101-150
Delta Valley & Southern Railway Company	100XM	50 XM	8/4/78	15 years	DVS 1001-1050
Galveston Wharves	1000XM	250 XM	10/23/78	15 years	GWF 1001-1250

<u>Lessee</u>	<u># of Boxcars to be Under Lease</u>	<u># of Boxcars which are Trust Equipment</u>	<u>Date of Leases</u>	<u>Term</u>	<u>Trust Equipment Identification Numbers (Both Inclusive)</u>
Sierra Rail- road Company	50XM	50 XM	7/26/78	15 years	SERA 5000-5049